

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0537
Individual Income Tax
Calendar Year 1999**

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ISSUE(S)

I. Taxpayer's Indiana Income Tax Exemptions

Authority: IC 6-3-1-3.5(a)(3) and (4); IC 6-3-1-3.5(a)(5)(A); IC 6-8.1-3-3(a); Johnson County Farm Bureau v. Dep't of Revenue, 568N.E.2d 578 (Ind. Tax Ct. 1991); 45 IAC 3.1-1-5(b)(4).

Taxpayer protests the disallowance of an exemption for a dependent child.

STATEMENT OF FACTS

Taxpayer filed a joint 1040 federal return reporting income received during 1999. Taxpayer submitted a divorce decree where she could claim the federal exemption for one child and her ex husband claims the other. Taxpayer claimed both dependent children for Indiana State Tax purposes because both children live with her in Indiana.

On July 30, 2002, the Department issued taxpayer a notice of "Proposed Assessment". The assessment of additional taxes was based upon the inconsistency between taxpayer's federal and state returns.

I. Taxpayer's Indiana Income Tax Exemptions

DISCUSSION

Taxpayer claimed herself, her husband, and two dependent children as exemptions on the state tax return. The Department issued its proposed assessment because the federal return did not agree with the exemptions reported on the state return. In the divorce decree, the taxpayer was allowed the right for income tax purposes to claim the dependency exemption for one child.

Taxpayer argues that she was legitimately entitled to claim all four exemptions on her state return. Taxpayer maintains that both children lived with her in Indiana.

Insofar as relevant to taxpayer's "Line 8" deductions, IC 6-3-1-3.5(a)(3) and (4) state that the Indiana taxpayer is to "Subtract one thousand dollars (\$1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars (\$1,000). Subtract one thousand dollars (\$1,000) for each of the exemptions provided by Section 151(c) of the Internal Revenue Code. Insofar as relevant to taxpayer's "Line 9" deductions, IC 6-3-1-3.5(a)(5)(A) permits an Indiana taxpayer to "subtract one thousand (\$1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code for taxable years beginning after December 31, 1996."

The statutory formula is straightforward; an Indiana taxpayer may claim a \$1,000 exemption on line 8 of its Indiana return if that exemption is allowed under I.R.C. 151(c). The Indiana taxpayer may claim a \$1,500 deduction on line 9 of her Indiana return if that exemption is allowed under I.R.C. 151(c)(1)(B).

The explanatory language on the 1999 IT-40 return is equally straightforward; line eight on the form states that the taxpayer is to report the "[n]umber of exemptions claimed on your federal return." The IT-40 also states that the taxpayer is entitled to claim an [a]dditional exemption for certain dependent children" and to report that number on line nine.

Relevant to line eight, the Department's accompanying instructional booklet states that "You are allowed a \$1,000 exemption on your Indiana tax return for each exemption *you claim on your federal return.*" (*Emphasis added*). Relevant to line nine, the booklet states that, "An additional exemption, which has been increased to \$1,500, is allowed for certain dependent children."

The instructions printed on the Indiana tax form, the accompanying instructional booklet, and the Department's regulation preclude an Indiana taxpayer from claiming an exemption unless the exemption has also been claimed on the corresponding federal return. The tax form, the instructional booklet, and accompanying regulation have interpreted the applicable statutes as being consistent with federal requirements for claiming dependent exemptions.

The legislature has delegated to the Department the authority to interpret and apply the tax statutes. IC 6-8.1-3-3(a) states that "The department shall adopt, under IC 4-22-2, rules governing: (1) the administration, collection, and enforcement of the listed taxes; (2) the interpretation of the statutes governing the listed taxes; (3) the procedures relating to the listed taxes; and (4) the methods of valuing the items subject to the listed taxes."

There is nothing to indicate that the Department acted beyond its authority in promulgating a regulation mandating that Indiana taxpayers first claim the exemption on their federal returns before claiming the exemption on the corresponding Indiana return. Specifically, there is nothing to indicate that the Department acted beyond the scope of its authority in noting the discrepancy between taxpayer's federal and state 1999 returns and rendering an additional assessment based upon that discrepancy. "A rule issued by an agency pursuant to its statutory authority to

implement the statute has the force of law.” Johnson County Farm Bureau v. Dep’t of Revenue, 568 N.E.2d 578, 584 (Ind. Tax Ct. 1991).

Taxpayer argues that “Indiana law allows exemptions where they are qualified and [does not] intend to deprive taxpayers of receiving an exemption.” Taxpayer makes an argument – based on general principles of equity and fairness – that the Department circumvent the regulation and permit taxpayer to maximize the tax advantages attendant on her decision to claim four exemptions on her 1999 state return. The Department has no such equitable authority and must decline taxpayer’s request.

FINDING

Taxpayer’s protest is respectfully denied.

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